

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:	*	
ARIEL AND LOIDA MAISELMAN	*	
	*	
Petitioner	*	Board of Appeals No. S-2785
	*	(OZAH No. 11-10)
	*	
Loida Maiselman	*	
For the Petitioner	*	

Cece Kinna	*	
	*	
Department of Housing and	*	
Community Affairs	*	

Report and Recommendation by: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

In Petition No. S-2785, Ariel and Loida Maiselman, seek approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 10000 Greenock Road, Silver Spring, Maryland. The legal description of the property is Lot 14, Block D, in the Northmont Subdivision, and is shown on Tax Map No. JP12.

On October 22, 2010, the Board issued a notice of a public hearing before the Hearing Examiner for February 7, 2011. Ex. 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in its report dated January 31, 2011 (Exhibit 13), recommended approval of the Petition, with four (4) conditions. A Housing Inspector from the Department of Housing and Community Affairs (DHCA) inspected the property and issued her report on February 2, 2011.

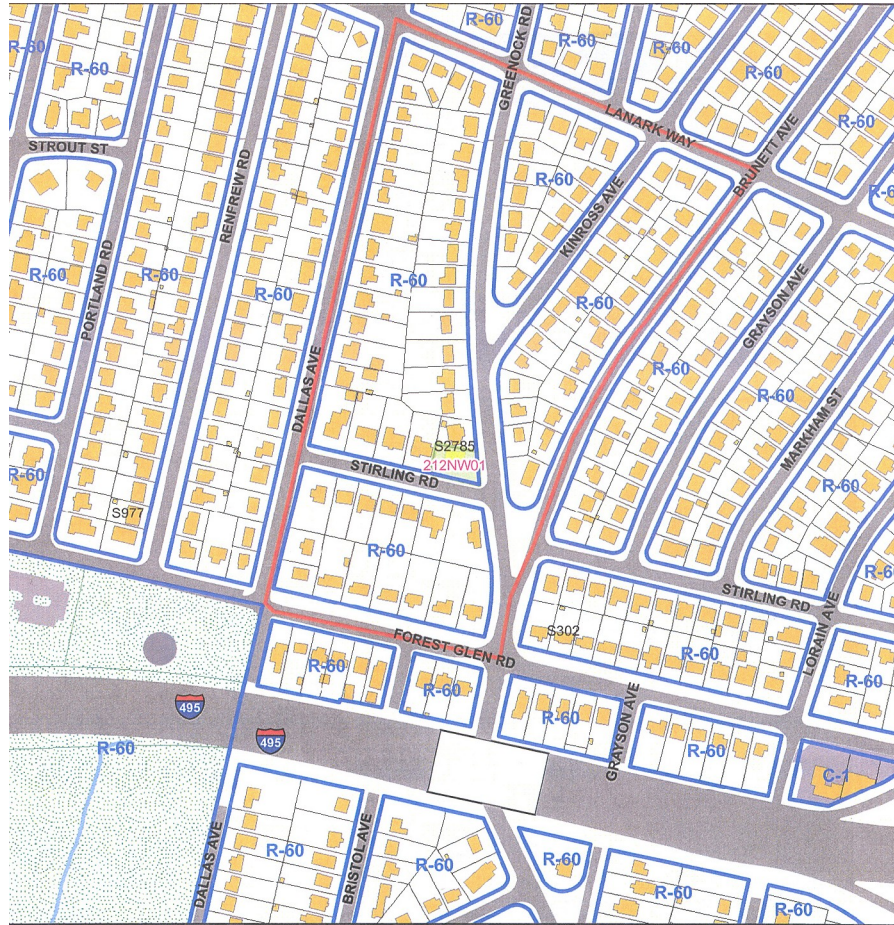
The hearing went forward as scheduled on February 7, 2011. No opposition appeared at the hearing.

For the reasons set forth below, the Hearing Examiner recommends approval of the Special Exception petition, subject to the conditions set forth in Section V of this report.

II. FACTUAL BACKGROUND

A. The Subject Property and its Current Use

The subject property is located at 10000 Greenock Road, Silver Spring, Maryland, located on the northwest corner of the intersection of Greenock and Stirling Roads. Improved with a single-family home totaling approximately 1,718 square feet, the property is zoned R-60. The general location of the property is shown on the map reproduced on page 3 (Ex. 13, Attachment 2).



The property is a corner lot consisting of approximately 9,182 square feet and the dwelling faces Greenock Road, as shown on Exhibit 13, Attachment 3:



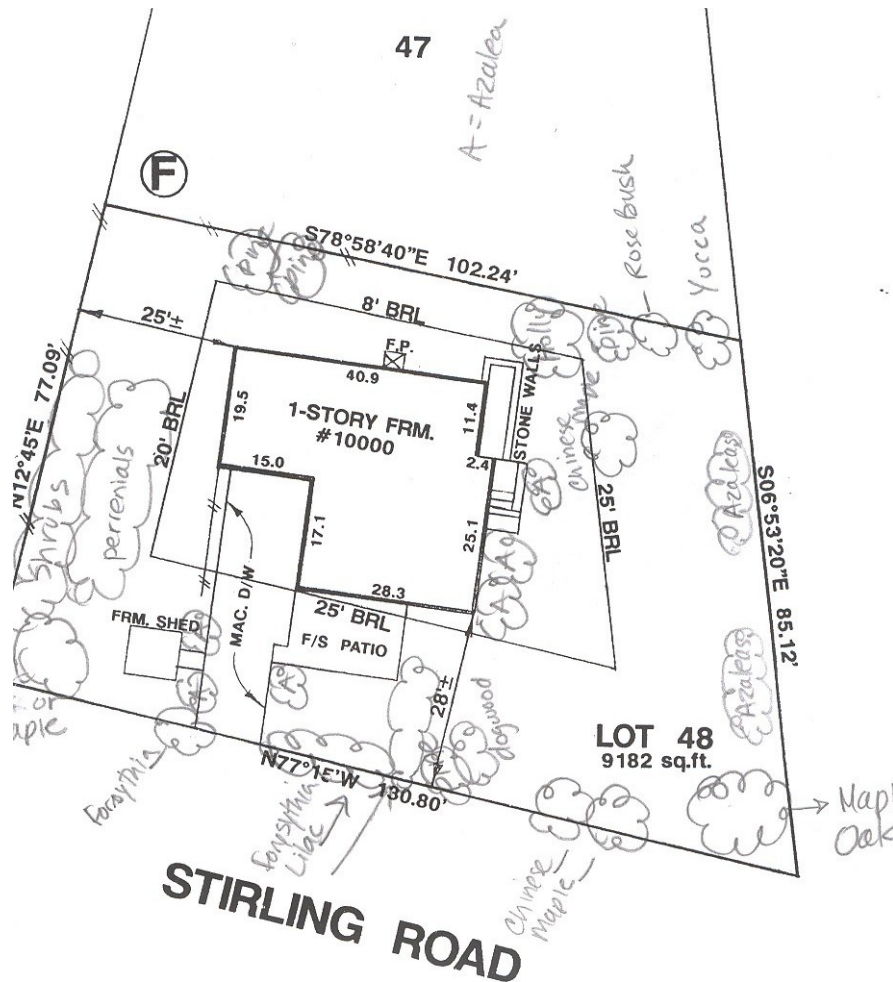
Access to the accessory apartment (located at the rear of the home) is from a driveway on Stirling Road, shown below (Ex. 13, Attachment 3):



A slate walkway along the rear (western) side of the home (located behind the shed shown in the picture above) leads to the entrance to the accessory apartment (Exhibit 13, Attachment 3):



The existing landscaping on the property will remain unchanged (Ex. 5) as shown below. Technical Staff advises that the site has a gently sloping lawn with multiple shrubs and shade trees along the north, west and southern sides. Ex. 13, p. 2.



B. The Surrounding Neighborhood

Technical Staff advises that the neighborhood surrounding the subject property is generally bounded by Lanark Way to the north, Brunett Avenue to the east, Dallas

Avenue to the west, and Forest Glen Road to the south. This area consists primarily of single-family dwellings in the R-60 Zone.

C. The Master Plan

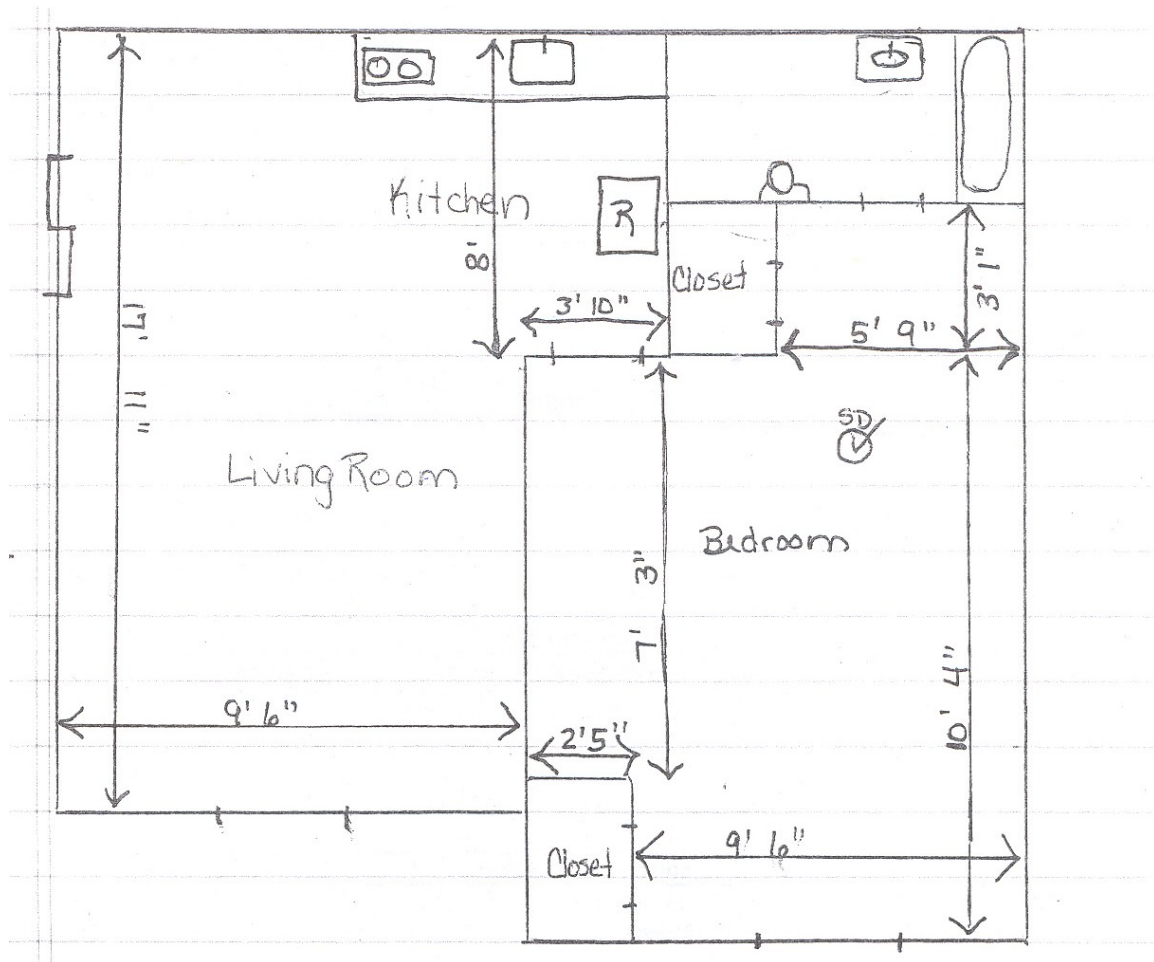
The subject property lies within the “South Four Corners” neighborhood of the 1996 Four Corners Master Plan. Exhibit 13, p. 3, Ex. 8. Technical Staff advises that the Master Plan contains no specific recommendations relevant to this particular property. Exhibit 13, p. 3. Technical Staff advises that the “overall objective” of the plan is to “preserve and maintain the character and integrity of the existing, well-established residential neighborhoods as the foundation of the community by assuring that new development...and special exception uses are compatible with the existing residential character.” Ex. 13, p. 3. According to Technical Staff, the Master Plan focuses primarily on discouraging the encroachment of non-residential special exceptions on residential uses. Because this does not involve a non-residential special exception, Technical Staff found that the use conforms to the Four Corners Master Plan.

D. The Proposed Use

Installed in 1992, the apartment was originally a “registered living unit” occupied by Loida Maiselman’s parents, Pio and Zenaida Consuegra, so that they could care for the Maiselman’s children. Subsequently, the Maiselmans moved from the property (although they still own it) and the Consuegras now occupy the main dwelling. Ex. 12.

The apartment contains a living room, bedroom, bathroom, and kitchen (with an electric cooktop and microwave for heating food). Ex. 14. The housing inspector reports that the apartment consists of 334 square feet of habitable space and may be occupied by up to 2 persons. Exhibit 13. The floor plan drawn by the Housing Inspector (attached to Ex. 14) is shown on page 7. DHCA inspected the property on February 2, 2011 and

advises that the single housing code violation (installation of a smoke detector outside of the bedroom doorway) had been abated. Ex. 14. The Inspector also found that there were 2 off-street parking spaces, 7-8 on-street parking spaces, and that the apartment (334 square feet) was less than 50% of the size of the total enclosed area (1,718 square feet).



The slate walkway leading toward the entrance to the apartment is lit by a motion sensor light which is residential in nature. T. 12.

E. Traffic Impacts

Technical Staff advises that the requested special exception will generate a single

additional peak hour trip for a total of two peak hour trips. Exhibit 13, Attachment 5, p.

2. Due to the small scale of the proposed use, the Hearing Examiner has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory apartment meets the requirements of Local Area Transportation Review (“LATR”). Similarly, the Hearing Examiner also finds that the proposed accessory apartment generates fewer than four (4) trips and there is not subject to Policy Area Mobility Review (“PAMR”).

F. Environmental Impacts

Petitioner does not propose any external changes to the site. Technical Staff advises that the property is exempt from the Forest Conservation Law. Exhibit 13, Attachment 6. Based on this evidence, the Hearing Examiner finds that Petitioner’s request will have no adverse environmental impacts.

G. Community Response

There was no community response to the special exception request.

III. SUMMARY OF THE HEARING

Petitioner testified at the public hearing in support of the petition. Mr. Stephen Morris, a DHCA inspector, also testified as to compliance with the Housing Code.

Mrs. Loida Maiselman:

Mrs. Loida Maiselman, owner of the property, testified that the exhibits she submitted fairly and accurately depicted the property and that she adopted the findings and conclusions of the Technical Staff Report as her own testimony. T. 8. The Maiselmans constructed the apartment in an area that had previously been part of the driveway. T. 11. She stated that the exterior lighting consisted of a motion sensor light located just outside of the French doors

which provided access. Mrs. Maiselman testified that her parents live in the main dwelling and intend to stay there as long as they physically may do so. T. 8-9.

Housing Code Inspector Cece Kinna:

Ms. Cece Kinna testified the apartment had been a registered living unit for some time, but could no longer be used as such because that law required that both residents of the main and accessory dwellings be related. T. 13. She further testified that the entrance to the apartment is on the rear side of the house and the main structure still maintains the impression of a single family residence. The apartment has an open area combining the kitchen and living room, one bedroom and a full bathroom. The bedroom has egress windows that meet the minimum size required by the housing code. T. 14.

Ms. Kinna further testified that when she first inspected, a smoke detector was located inside the bedroom and that the code requires one to be located outside the bedroom as well. T. 14. At her last inspection, the Maiselmans had installed the smoke detector outside of the bedroom and currently, there were no code violations at the property. T. 14. She found that the lot size is 9,000 square feet and that the total enclosed area (based on tax assessment records) is 1,718 square feet. As the habitable area is 334 square feet, the requirement that the apartment be subordinate to the main dwelling has been met. T. 15.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, the use conforms to the applicable master plan, and is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific

standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if she complies with the recommended conditions. Exhibit 13.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code, Section 59-G-1.21. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not “necessarily associated” with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory

apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 13, p. 4):

- (1) The existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit;
- (2) The provision within the apartment of the necessary facilities, spaces, and floor area to qualify as a habitable space under the applicable Building Code provisions;
- (3) The provision of a separate entrance and walkway and sufficient lighting;
- (4) The provision of sufficient parking; and
- (5) The added activity from an additional household, including the potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found “[t]he size, scale and scope of the requested use are minimal, and that any noise, traffic, neighborhood disruption, or environmental impacts associated with

the use would be slight.” Ex. 13, p. 4. Thus Staff concluded that there are no non-inherent adverse effects arising from the accessory apartment sufficient to form a basis for denial.

As the accessory apartment is fully contained within the interior of the single-family home, will generate only one additional trip, contains a separate walkway and entrance illuminated with lighting characteristic of residential homes, and has two off-street parking spaces and 7 – 8 spaces available on-street, the Hearing Examiner concludes that there are no non-inherent adverse effects of the requested use and there will be no adverse effects sufficient to warrant denial of the petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the 1996 Four Corners Master Plan Plan. The Plan does not explicitly address the question of accessory apartments, but it does emphasize preserving and maintaining the character and integrity of the existing, well-established residential neighborhoods by ensuring that new development and special exceptions are compatible with the residential character of the area. Ex. 13, pp. 4-5. The Plan also supports the R-60 zoning, which permits accessory apartments as special exceptions. The Technical Staff concluded that the proposed accessory apartment would be consistent with the Master Plan. Exhibit 14, p. 5.

Because the apartment is located to the rear of the main dwelling and is entirely contained within the existing enclosed area, the requested special exception will maintain the existing residential character of the property and the area. Thus, it is fair to say that the proposed use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the 1996 Four Corners Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and*

number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: As noted above, the accessory apartment will be entirely contained within an existing dwelling and will not require any external changes, thus maintaining the residential character of the individual property and the area. Both Technical Staff and the Housing Inspector advise that there will be sufficient parking available both off-street and on-street. Exhibits 13, 14. Transportation Staff reports that there will be no adverse traffic conditions generated by the proposed use at this location. Ex. 13, Attachment 5. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood. Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 13, Attachment 5), and the evidence supports this conclusion.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Access to the accessory apartment will be illuminated by a single motion sensor light above the rear entrance that the Hearing Examiner finds is residential in character. T. 12-13; Ex. 9(b). There is ample on-site parking available and occupancy will be limited to only two individuals based on the amount of habitable space. Since the use will be indoors and residential, and permit only two occupants, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. The Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff advises that there are no special exceptions within the neighborhood (as defined by Staff and adopted by the Hearing Examiner). Ex. 13, p. 5. Therefore, the addition of a single residential accessory apartment will not alter the predominantly residential nature of the area and the Hearing Examiner so finds.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth above, the evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 13, p. 6, Attachment 5.), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 13, Attachment 5. Since the existing house combined with the proposed accessory apartment would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Since the proposed use is estimated to generate only one additional trip in the

morning and evening peak hour, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially as to the availability of on-site parking and the use of an existing driveway, the Hearing Examiner finds that, as did Technical Staff, that the proposed use will not adversely impact the safety of vehicular or pedestrian traffic. Exhibit 13, Exhibit 14.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-*

family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located within an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: Technical Staff advises, based on information gathered from real property records and the Petitioner, that the existing dwelling was built in 1950. Exhibit 13, p. 9. Having no evidence to the contrary, the Hearing Examiner also finds that this requirement has been met.

- (5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The use as proposed does not violate any of the provisions of this subsection. The applicant's parents, Mr. and Mrs. Consuegra, will occupy the main dwelling and are considered "owners" of the property under Section 59-G-2.00(b)(4).

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

Conclusion: Access to the accessory apartment is in the rear of the dwelling and screened from Stirling Road by an existing shed. No external improvements are necessary for the proposed use. There will thus be no change to the residential appearance of the dwelling.

(5) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: No external modifications are necessary or proposed as part of this petition. Ex. 13, pp. 9-10.

(6) The accessory apartment must have the same street address (house number) as the main dwelling.

Conclusion: The accessory apartment will have the same address as the main dwelling.

(7) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.

Conclusion: The accessory apartment is subordinate to the main dwelling and under 1,200 square feet, as it occupies approximately 334 square feet of habitable space in Petitioner's existing 1,718 square-foot home. Exhibit 13.

59-G § 2.00(b) Ownership Requirements

(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period

of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

Conclusion: Section 59-G-2.00(b)(4) provides that an “owner” includes the parents of the individuals owning the property. As stated early, the applicant’s parents will occupy the main dwelling (T. 8-9), therefore, the Hearing Examiner finds that this requirement has been met.

(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.

Conclusion: The applicants submitted their deed into the record confirming that they purchased the property in 1987. Exhibit 16. Based on the deed and the State of Maryland tax assessment records, the Hearing Examiner finds that this requirement has been met.

(3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.

Conclusion: The Petitioners will receive compensation for only one dwelling unit as a condition of the special exception.

(4) For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.

Conclusion: Mrs. Maiselman testified that her parents, the Consuegras, occupy the main dwelling and therefore, under Section 59-G-2.00(b)(5), the “ownership” requirement has been met and the Hearing Examiner so finds. T. 8-9.

(5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: According to Technical Staff, the subject property consists of a single lot that is approximately 9,182 square feet in size. Based on this evidence, the Hearing Examiner finds that this requirement has been met.

- (2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As there are no other operating accessory apartments in the neighborhood (Exhibit 13, p. 11), the Hearing Examiner finds that the petition will not create an excessive concentration of similar uses.

- (3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*
- (i) More spaces are required to supplement on-street parking; or*
 - (ii) Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: The Housing Inspector concluded that the existing driveway provides two (2) parking spaces and that on-street parking for between 7-8 cars is also available. The Hearing

Examiner finds, therefore, that the minimum requirement of two (2) off-street spaces has been met and that there is sufficient parking to support the proposed use.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D. of this Report, the Housing Code Inspector's report (Exhibit 13) notes certain issues, and recommends that occupation of the accessory apartment be limited to no more than two persons. Petitioners have agreed to meet all conditions noted in the Housing Inspector's report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2785, which seeks a special exception for an accessory apartment to be located at 10000 Greenock Roac, Silver Spring, Maryland, be and hereby is, **GRANTED**, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record;
2. Based on habitable space in the apartment (334 square feet), no more than two persons may reside in the accessory apartment as determined by the Floor Plan submitted by the Housing Code Inspector (Exhibit 14).
3. Petitioners, their parents or children, must occupy the main dwelling unit on the lot on which the accessory apartment is located.
4. Petitioner, their parents or children must not receive compensation for the occupancy of more than one dwelling unit.
5. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and

occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: February 28, 2011

Respectfully submitted,

Lynn A. Robeson
Hearing Examiner